

FINAL REPORT

REVIEW OF WORKERS' COMPENSATION SELF-INSUREDS

STUDY COMMITTEE

January 1991

AUTHORIZATION AND APPOINTMENT

The Review of Workers' Compensation Self-Insureds Study Committee was established by the Legislative Council to "review the prevalence of self-insured workers' compensation programs and study the establishment of a mechanism to ensure funding for workers' compensation in the event a self-insured business undergoes bankruptcy."

Members serving on the Committee were:

Senator Don Gettings, Co-chairperson
Representative Joel Brown, Co-chairperson
Senator Linn Fuhrman
Senator Richard Running
Senator Richard Vande Hoef
Senator Joseph Welsh
Representative Phil Brammer
Representative Steve Hansen
Representative Don Hermann
Representative Janet Metcalf

COMMITTEE PROCEEDINGS

The Committee was granted one meeting, which was held July 25, 1990. The Study Committee received presentations from the following persons:

Acting Insurance Commissioner David Lyons, Division of Insurance, Department of Commerce, discussed several issues regarding the workers' compensation system and expressed his concern with recent failures within the

self-insured system that have called into question the certainty of the relief and the timeliness of benefits which an employee can expect in the event of injury. He also stated that the insolvencies have called into question the regulatory mechanism of determining eligibility for self-insurance and the Insurance Commissioner's ability to safely resolve an insolvency to ensure payment of injured workers. Acting Commissioner Lyons recommended that the Study Committee consider establishing a workers' compensation self-insurance guaranty fund which would pay only excess benefits and administrative costs not covered by the required bond. Acting Commissioner Lyons emphasized that the Division of Insurance wants to establish a method which will not unduly burden self-insured employers and will not eliminate the self-insured system as a viable option for workers' compensation coverage.

Mr. Tito Trevino, Former President of the Iowa Trial Lawyers Association, commented that he believes it is important to establish a guaranty fund for self-insureds, and stated that the point system used to calculate the amount of surety bond needed for self-insured employers is not consistently adequate. He also pointed out a number of inconsistencies in chapter 87 of the Iowa Code regarding the division of authority between the Industrial Commissioner and the Insurance Commissioner.

Mr. Hugh Morrill, Deere and Company, said that Deere and Company is the largest self-insurer of workers' compensation in Iowa, and has been self-insured for many years. He stated that the establishment of a guaranty fund would lessen the incentive to seek solutions to the problems through the regulatory process, and added that if a guaranty fund is established, the assessment mechanism should be based on claims experience rather than on payroll or the number of employees.

Mr. Edwin Detlie, Private Attorney, expressed his support for a guaranty fund for self-insureds. He said that a combined guaranty fund could be considered to include both self-insured companies and those that are insured through insurance companies. Mr. Detlie recommended that all employers should be required to carry a bond in lieu of insurance, not only those employers with employees engaged in hazardous employment. He suggested that a penalty provision should be added to the terms in section 87.21 so that the injured employee can recover a penalty in addition to actual damages. Mr. Detlie also suggested that the Industrial Commissioner be authorized to seize assets of the employer to satisfy the requirements posed by the Industrial Commissioner, and that injunctions be allowed for failure to follow the Industrial Commissioner's order to post security for a bond.

Mr. Dennis Colvin, representative, United Food Commercial Workers' Local P-3, Cedar Rapids, discussed the impact of the closing of Farmstead Foods on its employees' workers' compensation claims. He stated that approximately 33 out of every 100 employees in the meatpacking industry are hurt each year. Mr. Colvin suggested that the Industrial Commissioner should closely examine the amount of bond needed for, and the intent of the meatpackers desiring self-insured status.

Mr. Thomas Pitner, General Counsel for Iowa Electric Light and Power Company, expressed the concerns of the Iowa Utility Association regarding proposals made by the Insurance Division, stating that the proposals will diminish the regulatory authority the General Assembly has provided by codifying financial tests used and eliminating the Commissioner's authority to grant waivers of the rules. He also stated that the Division should relax its requirement for annual actuarial evaluations and require only periodic evaluations unless there are concerns regarding the financial soundness of an employer.

Mr. Art Hedberg, Attorney for AFL-CIO, discussed the effect of bankruptcy litigation on the administration of workers' compensation funds for Farmstead Food employees who have claims. He expressed support for a guaranty fund for self-insured companies as the only alternative to requiring all employers to purchase commercial insurance.

Ms. Diane Kolmer, U.S. West, presented the position of self-insured company U.S. West, stating that she feels the current system regulating self-insured companies is adequate. She pointed out that U.S. West has successfully made job safety a priority and has been a good corporate citizen in the state.

Mr. Myron Linn, Rolscreen Company, Pella, stated that creating a guaranty fund without requiring aggregate excess insurance from each of the self-insureds involved could create unlimited financial exposure for each in case of an insolvency. Mr. Linn recommended strengthening the qualification requirements to self-insure, strengthening the bonding requirements for qualified self-insureds, and requiring an appropriate aggregate stop-loss policy to be in effect for all self-insured employers.

COMMITTEE RECOMMENDATIONS

The Committee adopted the following recommendation:

That the Commissioner of Insurance, in cooperation with the Industrial Commissioner's office, is to prepare two basic proposals for later consideration by the members of the Study Committee.

1. A guaranty fund proposal incorporating the advice of the Study Committee.
2. A revision of the existing regulatory scheme and point system, providing for:

a. Increased financial standards for eligibility as a self-insured, and increased security requirements at all levels, including inflation adjustments and reevaluation of the formula in light of experience and predicted risk.

b. Increased standards for quality of financial statements submitted, including civil and criminal penalties for failure to adequately disclose the financial condition of the company on a continuing or quarterly basis.

c. An increased application or administrative fee to fund both the administrative costs for the review of self-insurance applications and those associated with investigations and insolvencies.

d. Clear division of authority between the Insurance Commissioner and the Industrial Commissioner.

e. Enforcement authority and mechanisms to detect and deter employers who "go bare," that is who neither purchase workers' compensation liability insurance, nor self-insure pursuant to a certificate of relief from the Commissioner of Insurance. (Hazardous employment limitation of Iowa Code section 87.16.)

f. Any other Code changes recommended by either Commissioner to update or harmonize, consistent with the consensus of the Study Committee.

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